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6 **IN THE UNITED STATES DISTRICT COURT**
7 **FOR THE DISTRICT OF ARIZONA**

8 Nexa Mortgage LLC,

9 Plaintiff,

10 vs.

11 Smart Mortgage Centers Incorporated,
12 et al.,

13 Defendants.
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No. CV-23-00410-PHX-SPL

ORDER

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16 Before the Court is Plaintiff Nexa Mortgage LLC's ("Nexa's") Motion for Summary
17 Judgment (Doc. 66) and Motion for Leave to File Second Amended Complaint (Doc. 72).
18 Defendant Smart Mortgage Centers Incorporated ("Smart Mortgage") has not filed any
19 response to either of the pending motions.

20 After Smart Mortgage's counsel withdrew from this matter in February 2025 (Doc.
21 61), it was explicitly warned that, as a corporation, it could not proceed *pro se* in this action,
22 and that if it "fails to obtain counsel and respond to Plaintiff's Motion for Summary
23 Judgment (Doc. 66), the Court advises Defendant that it will rule on the Motion for
24 Summary Judgment without a Response" (Doc. 69 at 2).¹ Despite this explicit warning,

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26 ¹ Smart Mortgage failed to respond to the Motion for Summary Judgment, but it
27 also failed to timely respond to Nexa's Requests for Admission, which were served on
28 February 13, 2025. (Doc. 66 at 3). Those requests may therefore be deemed admitted as a
matter of law. *See* Fed. R. Civ. P. 35(a)(3) ("A matter is admitted unless, within 30 days
after being served, the party to whom the request is directed serves on the requesting party
a written answer or objection . . ."). "[S]ummary judgment cannot be granted by default
even if there is a complete failure to respond to the motion" Fed. R. Civ. P. 56 advisory

1 and despite Smart Mortgage being granted a 30-day extension to obtain new counsel and
 2 respond to the pending Motion for Summary Judgment, no new counsel has entered an
 3 appearance. By all appearances, Smart Mortgage has abandoned this litigation.

4 Nexa has moved for summary judgment as to Smart Mortgage's liability only, as it
 5 "seeks the opportunity to present evidence on damages at a later stage." (Doc. 66 at 16).
 6 However, the Court is disinclined to rule on the merits at this juncture, as Smart Mortgage's
 7 continued nonappearance may foreclose Nexa's ability to take the damages issue to trial.

8 As to Nexa's Motion for Leave to File Second Amended Complaint (Doc. 72), Nexa
 9 explained that the amendment simply clarifies a number of allegations in its First Amended
 10 Complaint and "incorporates the facts set forth in Plaintiff's summary judgment briefing
 11 as to the licensing process and conversations that occurred with regulators," and
 12 amendment would therefore not prejudice Smart Mortgage. (Doc. 72 at 2, 4). Given that
 13 Smart Mortgage failed to respond to Nexa's Motion for Leave to File Second Amended
 14 Complaint (Doc. 72), this Court may deem its nonresponse as consent to the Motion being
 15 granted. *See* LRCiv 7.2(i).

16 Accordingly,

17 **IT IS ORDERED** that Plaintiff Nexa Mortgage LLC's Motion for Summary
 18 Judgment (Doc. 66) is **denied without prejudice**.

19 **IT IS FURTHER ORDERED** that Plaintiff Nexa Mortgage LLC's Motion for
 20 Leave to File Second Amended Complaint (Doc. 72) is **granted**. Plaintiff shall have until
 21 **July 25, 2025** to file its Second Amended Complaint on the docket. Furthermore, Plaintiff
 22 shall have until **August 1, 2025** to serve a copy of the Second Amended Complaint on
 23 Defendant Smart Mortgage Centers Incorporated and file proof of service with this Court.

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 25 committee's note to 2010 amendment. However, "an opposing party's failure to respond
 26 to the motion will be deemed an admission of the *facts* as presented by the moving party."
 27 *Heinemann v. Satterberg*, 731 F.3d 914, 917 (9th Cir. 2013); Fed. R. Civ. P. 56(e)(2) (if a
 28 party "fails to properly address another party's assertion of fact as required by Rule 56(c),
 the court may . . . consider the fact undisputed for purposes of the motion."). Because of
 Smart Mortgage's failure to respond both to the RFAs and the MSJ, it is deemed to have
 admitted the relevant material facts, which could justify granting Nexa's MSJ. However,
 the Court will deny the motion *without prejudice* at this time given that the procedural
 posture of this case appears to be in limbo.

